

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR**

D.B. CIVIL SPECIAL APPEAL (W) NO.1483/2006

**Anil Panjwani
Vs.
Rajasthan High Court, Jaipur Bench, Jaipur & Ors.**

Date of Judgment :: 13 February, 2007

P R E S E N T

**HON'BLE THE CHIEF JUSTICE SHRI S.N. JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ**

Shri Anil Panjwani, appellant in person.

BY THE COURT (PER HON'BLE THE CHIEF JUSTICE)(ORAL):

This special appeal is directed against the order of the learned Single Judge dated 6.11.2006 in S.B. Civil Writ Petition no.7960/2006 dismissing the writ petition of the appellant.

Facts giving rise to the writ petition/appeal are that in a civil suit, the appellant filed application for temporary injunction on 9.2.1987. On 10.2.1987 status quo order was passed. He filed application alleging disobedience of the court's order and prayed for action in terms of order 39 rule 2A of the Code of Civil Procedure (in short, 'the Code') which was rejected by the Additional Civil Judge (Junior Division), Jaipur City on 8.1.2001. The court

found that respondent, Ramesh Chand Ardawatia, was represented by power of attorney holder and there was no personal notice to the respondent. The court held that no action can be taken for disobedience without personal notice to the party. The appellant challenged the order in appeal before the Additional District Judge no.1, Jaipur City. The appellate court vide order dated 7.12.2001 partly allowing the appeal remanded the matter for fresh hearing by the trial court after giving opportunity of hearing to the respondent and serving him copy of the application under order 39 rule 2A. The appellant came to this Court in S.B. Civil Revision Petition no.72/2002. By order dated 03.02.2006, a learned Judge of this Court modified the order of the appellate court to the extent that the respondent would be permitted to file reply and lead evidence in support of his contention but the evidence which had already been led by the petitioner, meaning thereby the appellant herein, and the witnesses who had been cross-examined would alone be relied upon by the petitioner/appellant in support of his case since the petitioner/appellant did not want to lead any fresh evidence. The learned Judge noted the statement of the appellant that he does not wish to press the revision against the judicial officers who had passed the aforesaid orders on 8.1.2001 and 7.12.2001. After remand, the Additional Civil Judge (Junior Division) again rejected the application under order 39 rule 2A of the Code vide

order dated 20.7.2006. The court held that the appellant had failed to prove his case that the respondent had knowingly disobeyed the status quo order of the court. In this connection, the court cited a decision 'Baunwani Meera Rani Vs. Foreman Mali, AIR 1971 AP 157'. The appellant challenged the order in appeal before the Additional District Judge no.2 in Civil Misc. Appeal no.23/2006. In the appeal, he filed application for prosecution of the advocate and the respondent alleging that he had cited a wrong decision relying on which the Additional Civil Judge had dismissed his application under order 39 rule 2A of the Code. It was submitted that the decision appearing at AIR 1971 AP 157 (the relevant judgment really begins from page 156) was in the case of Mohammad Jaffer Ali Vs. S. Rajeshwara Rao on an entirely different point, and there was no decision in the case of Baunwani Meera Rani Vs. Foreman Mali reported at AIR 1971 AP 157. The appellant contended that this was a deliberate attempt to mislead the court which amounted to fraud and cheating for which not only the respondent but also the Advocate, Pratap Singh Sirohi, should be prosecuted. The Additional District Judge no.2 disposed of the appeal and the said application for criminal prosecution by separate orders on 7.10.2006. As regards the main appeal against the order rejecting the application under order 39 rule 2A of the Code, the learned Judge took the view that the trial court had failed to record any

specific finding as to whether the respondent was aware of the status quo order of this Court, and therefore the matter requires fresh consideration, and accordingly remanded the matter back for fresh hearing by the trial court. The application for criminal prosecution was rejected observing that no act constituting the offences of forgery and cheating had been committed in respect of proceeding pending before it, and therefore the court was not competent to lodge first information report for prosecution of the advocate. The appellant came to this court by way of writ petition being S.B. Civil Writ Petition no.7960/2006 which was dismissed by the learned Single Judge on 6.11.2006. He has now come to the Division Bench in appeal.

In this appeal we are not called upon to consider the merit of this case i.e. the question as to whether the respondent committed disobedience of the court's order within the meaning of order 39 rule 2A of the Code so as to make him liable for action. The only point for consideration is whether the court below committed error in refusing to take action against the respondent and the advocate for citing a wrong decision.

It is no doubt true that while rejecting the appellant's application under order 39 rule 2A of the Code, the court placed reliance on a so called

decision in the case of 'Baunwani Meera Rani Vs. Foreman Mali' supposedly reported in AIR 1971 AP 157, cited by the advocate. The question is whether a wrong citation constitutes any offence for which the persons concerned should be prosecuted. We are of the view that simply because a decision cited on behalf of a party or referred to in the judgment/order is not available in the relevant journal, it does not per se mean that the act amounted to fraud or cheating. Quite often than not, decisions are cited which are not relevant to the point. Sometimes citation does not tally. A wrong citation may be for various reasons and in different circumstances, and it is not necessarily indicative of mala fide and criminal intent. It may be a bona fide mistake. It could be a typographical error. It is relevant to mention here that the decision was cited in support of the contention that unless the party is made aware of the restraint order, he cannot be held liable for disobedience. That is the well settled position in law and to establish the point, it was hardly necessary to cite any decision. The burden of the judgment of the Additional Civil Judge was that the appellant had failed to prove knowledge of the restraint order on the part of the respondent so as to make him liable for disobedience. The correctness of the finding apart, merely because a wrong decision was cited by the advocate which was referred to in the order by the learned Judge, it does not mean that either the party or the advocate should be proceeded

against or prosecuted. The entire exercise for criminal prosecution of the respondent and the advocate, in our opinion, in the facts and circumstances was totally misconceived. The learned Single Judge therefore did not commit any error in dismissing the writ petition of the appellant.

In the result, the appeal is dismissed.

[MOHAMMAD RAFIQ], J.

[S.N.JHA], CJ.

Skant/-